WILLIAM H. SIEGFRIED

IBLA 91-139 Decided April 9, 1996

Appeal from a decision of the Alaska State Office, Bureau of Land Management, denying petition for class I reinstatement of Federal oil and gas lease AA 48819-AD.

Affirmed.

1. Oil and Gas Leases: Reinstatement--Oil and Gas Leases: Termination

A holder of a noncompetitive oil and gas lease terminated by operation of law for failure to pay the annual lease rental timely is not entitled to a class I reinstatement of the lease, pursuant to 30 U.S.C. § 188(c) (1994), where the existence of a chronic condition is asserted as justification for late payment, when that condition was ongoing for 16 months prior to the payment due date and was being treated at the time payment was due and there has been no showing that the chronic condition had a specific causal relationship to the late payment.

APPEARANCES: William H. Siegfried, pro se.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

William H. Siegfried has appealed from a decision of the Alaska State Office, Bureau of Land Management (BLM), dated January 9, 1991, denying his petition for a class I reinstatement of oil and gas lease AA 48819-AD, which had terminated by operation of law for failure to timely submit the annual rental of $40 on or prior to October 1, 1990, the anniversary date of the lease. For reasons set forth below, we affirm.

Federal oil and gas lease AA 48819-AD had been created, effective January 1, 1984, by a partial assignment from United Arctic Oil Inc., headquartered in Los Angeles, California, to appellant out of base lease AA 48819. The new lease contained 40 acres described as the NE¼ NE¼ sec. 31, T. 7 S., R. 2 E., Copper River Meridian. At the time that the assignment was approved, appellant was notified that the annual rental for the lease would continue to be due on or before October 1 of each year, as provided in the original base lease.

On November 5, 1990, BLM notified Siegfried that lease AA 48819-AD had terminated because of untimely payment of the rental required and informed him of the standards which he would have to meet to obtain either class I or class II lease reinstatement as provided by 30 U.S.C. §§ 188(c) and (d) (1994). By letter dated November 12, 1990, Siegfried responded to this notice and apprised BLM of his desire to retain the lease, pointing out that his check for the rental amount had been mailed to the Minerals Management Service's Bonus and Rental Accounting Support System (MMS-BRASS) Office in Denver, Colorado. He noted that he had made all of his prior payments in a timely fashion and requested that he be kept informed as to the status of the matter. He also enclosed a check for $25, presumably intending this to cover the nonrefundable filing fee for a class I reinstatement petition. 1/

On November 27, 1990, BLM notified appellant that MMS-BRASS had not received payment until October 18, 1990, in an envelope postmarked October 16, well after the anniversary date of the lease. BLM informed Siegfried that additional information would be required in order to support a class I reinstatement of his lease. Among the reasons which BLM noted might be considered acceptable for a class I reinstatement was personal illness which required a doctor's care at or near the time that the rental was due.

On January 8, 1991, appellant filed a petition for a class I reinstatement of the lease, stating that the late payment resulted from his physical condition at the time. He included a supporting note from his attending physician, which stated that appellant has "been under our care since 6/8/87 for reactive depression," for which he had been medicated "daily since that time."

In its January 9, 1991, decision, BLM denied appellant's petition for a class I reinstatement. This decision explained that, while appellant had established that he was under a doctor's care since June 1987, he had not shown that he had been incapacitated at or near the anniversary date "to the extent that your payment could not have been timely paid." In light of this conclusion, BLM denied the requested class I reinstatement. Appellant thereupon pursued a timely appeal to this Board.

In his statement of reasons (SOR) in support of his appeal, appellant challenges BLM's conclusion that he had not shown that he was incapacitated at or near the anniversary date of the lease, asserting that depression is, indeed, an "incapacitating, variable illness [which] impairs concentration and interfere's with one's work and daily living." Appellant further

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1/ The $25 fee required for a class I reinstatement should be contrasted with the $500 filing fee required for a class II reinstatement.

notes that he had done his best to maintain this lease and concluded by expressing his view that he has established his right to a class I reinstatement. 2/

Section 31(b) of the Mineral Leasing Act, as amended, 30 U.S.C. § 188(b) (1994), provides that any lease on which there is no well capable of producing oil or gas in paying quantities "shall automatically terminate by operation of law" upon the failure of the lessee to pay rental on or before the lease anniversary date. Payment, in this context, means actual receipt by the designated payee of the funds. See, e.g., William F. Branscome, 81 IBLA 235 (1984). Since it is undisputed that the rental payment was not received by MMS-BRASS until October 18, 1990, there is no question that the subject lease terminated under the statute.

[1] Federal leases terminated for failure to timely submit the annual rental may, however, be reinstated under two separate provisions. Under the terms of the Act of May 12, 1970, 84 Stat. 206, as amended, 30 U.S.C. § 188(c) (1994), the Secretary was authorized to reinstate a lease only if the rental payment was paid or tendered within 20 days after the due date and the lessee established that the failure to timely pay was either justifiable or not due to a lack of reasonable diligence on the part of the lessee. Reinstatement under the 1970 Act became generally known as class I reinstatement upon the adoption by Congress in 1983 of the provisions codified at 30 U.S.C. § 188(d) (1994) which allowed the reinstatement of leases not eligible for reinstatement under the provisions of the 1970 Act so long as the lessee could show that the failure to timely pay was "inadvertent." Reinstatement under the provisions of the 1983 Act were deemed to be class II reinstatements.

With the adoption of the 1983 Act, reinstatement became possible for virtually all lessees who had unintentionally failed to timely submit the annual rental for an oil and gas lease. See Torao Neishi, 102 IBLA 49

2/ Appellant also noted that he had at one time been credited with an overpayment on the lease and complained that BLM had not informed him of what had happened to this money, despite his attempts to learn the status of that overpayment. Our review of the records, however, shows that while appellant did, indeed, make an overpayment of $40 on Sept. 21, 1985, this overpayment was initially credited to his lease as the 1987 rental payment on Feb. 20, 1987. Siegfried submitted another payment for the lease on Oct. 19, 1987, which was essentially treated as the 1988 payment. On Oct. 17, 1988, Siegfried submitted another $40 payment which was ultimately credited for the 1989 lease payment. Siegfried made no further payments until the payment received on Oct. 18, 1990. Since, in the absence of a payment in 1989, there was no longer an outstanding credit, appellant's lease terminated on Oct. 1, 1990, when the annual rental for the lease had not been received.

(1986). Since both the cost and the terms of reinstatement are more onerous under class II, lessees generally prefer to obtain a class I reinstatement and, many lessees, including appellant herein, have failed to pursue a class II reinstatement even though it would clearly have been obtainable. Those who forego reinstatement under class II, however, must meet the considerably higher standards required under class I reinstatement. Thus, for appellant to succeed in the instant appeal, he must show not merely that his payment was late through inadvertence. Rather, he must establish either that he exercised reasonable diligence or that his failure to exercise reasonable diligence can be deemed "justifiable" as that standard has been refined in a multitude of Board decisions.

Commencing with its earliest adjudications under the 1970 Act, the Board has recognized that, assuming the lease rental was paid or tendered within 20 days of the anniversary date, a lessee could obtain reinstatement if he or she could show either that reasonable diligence had been exercised or that failure to exercise reasonable diligence could be deemed justifiable. See generally Louis Samuel, 8 IBLA 268 (1972).

In applying this dual standard, the Board has consistently stressed that the reasonable diligence test is an objective standard. An individual has exercised reasonable diligence if, considering the normal delays in the transmittal of mail, the payment was sent in sufficient time to reach its required destination on or before the anniversary date of the lease. See, e.g., Torao Neishi, supra, Melvin P. Clarke, 90 IBLA 95 (1985); Louis Samuel, supra.

The justifiable test, on the other hand, is based on subjective considerations. Thus, the Department has held that where circumstances have arisen beyond a lessee's control which prevented the exercise of reasonable diligence, the failure of the lessee to exercise the required diligence may be deemed justifiable. See, e.g., George Foster, 109 IBLA 82 (1989); NP Energy Corp., 72 IBLA 34 (1983); Louis Samuel, supra. More specifically, we have held that, where the evidence establishes that "the death or illness of the lessee or a member of lessee's close family occurred in immediate proximity to the anniversary date and was the causative factor for failure to tender the payment timely," the failure to exercise reasonable diligence may be deemed justifiable. Marian L. Kleiner, 129 IBLA 216, 218 (1994); see also Denise M. White, 120 IBLA 163 (1991); Joanne F. Bechtel, 76 IBLA 1 (1983). We note that the Department's bifurcated analysis of the 1970 reinstatement provision has received judicial approbation. See Ram Petroleums, Inc. v. Andrus, 658 F.2d 1349 (9th Cir. 1981); Ramoco, Inc. v. Andrus, 649 F.2d 814 (10th Cir.), cert. denied, 454 U.S. 1032 (1981).

Applying these standards to the instant appeal, we note that appellant's payment, which was due on October 1, 1990, was not received until October 18, 1990, in an envelope postmarked October 16. It is clear, as

explained above, that the evidence fails to establish that appellant exercised "reasonable diligence" within the meaning of the 1970 reinstatement provisions. Thus, if appellant's petition for a class I reinstatement is to be granted, it must be based on a finding that the failure to exercise reasonable diligence was "justifiable."

As noted above, the Board has held that illness or death of the lessee or a close family member which, occurring within close proximity to the anniversary date, can be said to have been a causative factor in the failure to exercise reasonable diligence will provide an adequate basis to support a finding that the failure to exercise reasonable diligence was justifiable. Appellant essentially argues that the chronic depression from which he suffers should serve as an adequate basis for reinstatement of the lease under class I.

While we do not wish to minimize appellant's situation, 3/ the problem with his petition is that he has failed to show that this condition had the requisite causality to his failure to timely submit the 1990 payment. Thus, while the onset of a depressive condition occurring within sufficient proximity to the lease's anniversary date might be deemed, in and of itself, to partake of the necessary causality (see, e.g., Sandra Lewis, 113 IBLA 174 (1990)), where, as here, the chronic condition is both pre-existing and being treated, more than the mere existence of the condition must be shown in order to justify reinstatement. In this latter situation, a petitioner must establish that the chronic condition had a specific causal relationship to the lateness of the payment at issue. See, e.g., Alfred R. Fairfield, 34 IBLA 132 (1978); Milan de Lany, 22 IBLA 47 (1975). This, appellant has failed to do. 4/ Accordingly, we must conclude that BLM correctly denied the petition for class I reinstatement.

3/ Indeed, the Board has, in the past, recognized that episodic clinical depression may serve as a basis for a finding of "justifiable" cause, since depression may dramatically compromise an individual's ability to function. See Sandra Lewis, 113 IBLA 174 (1990).

4/ In fact, as the chronology of past payments set forth in footnote 2 indicates, the date that the payment was transmitted in 1990 was completely consistent with the history of past payments. Thus, in calendar year 1987, payment was tendered on Oct. 19, while in calendar year 1988, payment was tendered on Oct. 17. The critical difference between the 1987 and 1988 payments and that which occurred in 1990 was that, in the 2 earlier years, there was an outstanding balance which, when applied to the lease, prevented it from terminating. By the time the payment was due in 1990, however, this balance had been credited for the 1989 payment and there was no longer any outstanding credits which could be applied to the lease when payment was not timely made. There is, therefore, no indication in the record before the Board that appellant's condition had a direct causal relationship to the failure to exercise due diligence with respect to the payment due on or before Oct. 1, 1990.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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James L. Burski
Administrative Judge

I concur:

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John H. Kelly
Administrative Judge